

ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRYAN EDWARD MAZZA,

Petitioner,

v.

ERIC ARNOLD, Warden,

Respondent.

No. C 14-1644 RMW (PR)

ORDER GRANTING MOTION TO
PROCEED IN FORMA
PAUPERIS; ORDER TO SHOW
CAUSE

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ Petitioner's motion to proceed in forma pauperis is GRANTED. The court orders respondent to show cause why a writ of habeas corpus should not be granted.

BACKGROUND

According to the petition, petitioner was convicted in Contra Costa County Superior Court of charges of robbery and being an ex-felon in possession of a handgun. Petitioner unsuccessfully appealed his convictions to the California Court of Appeal and the California Supreme Court. Petitioner filed the underlying petition on April 10, 2014.

¹ Petitioner did not name a respondent in this action. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Eric Arnold, the current warden of California State Prison - Solano, where petitioner is currently incarcerated, is hereby added as respondent in this action.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petitioner’s Claims

As grounds for federal habeas relief, petitioner alleges that: (1) the trial court’s denial of petitioner’s motion to sever violated petitioner’s right to a fair trial; (2) the prosecutor committed misconduct; and (3) counsel rendered ineffective assistance by failing to object to the prosecutorial misconduct. Liberally construed, the court orders respondent to show cause why the petition should not be granted.

CONCLUSION

1. The clerk shall serve by mail a copy of this order and the petition and all attachments thereto upon the respondent and the respondent’s attorney, the Attorney General of the State of California. The clerk shall also serve a copy of this order on the petitioner.

2. Respondent shall file with the court and serve on petitioner, within **sixty days** of the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the underlying state criminal record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within **thirty days** of the date the answer is filed.

3. Respondent may file a motion to dismiss on procedural grounds in lieu of an

1 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
2 2254 Cases within **sixty days** of the date this order is filed. If respondent files such a motion,
3 petitioner shall file with the court and serve on respondent an opposition or statement of non-
4 opposition within **twenty-eight days** of the date the motion is filed, and respondent **shall** file
5 with the court and serve on petitioner a reply within **fourteen days** of the date any opposition is
6 filed.

7 4. It is petitioner's responsibility to prosecute this case. Petitioner is reminded that
8 all communications with the court must be served on respondent by mailing a true copy of the
9 document to respondent's counsel. Petitioner must keep the court and all parties informed of any
10 change of address by filing a separate paper captioned "Notice of Change of Address." He must
11 comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal
12 of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

13 IT IS SO ORDERED.

14 DATED: 1 DECEMBER 2014


RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BRYAN EDWARD MAZZA,
Plaintiff,

Case Number: CV14-01644 RMW

CERTIFICATE OF SERVICE

v.

ERIC ARNOLD,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 21, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Bryan Edward Mazza J-97356
CSP Solano/12-125L
PO Box 4000
Vacaville, CA 95696-4000

Dated: August 21, 2014

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk